

Sause Bros., Inc. and International Longshoremen's and Warehousemen's Union, Local 142, AFL-CIO. Case 37-CA-4146

November 22, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND TRUESDALE

Upon a charge filed on July 12, 1995, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on August 4, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish necessary and relevant information following the Union's certification as the exclusive bargaining representative of the Respondent's cargo operations' assistant managers in Case 37-RC-3699. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On October 23, 1995, the General Counsel filed a Motion for Summary Judgment and Memorandum in Support. On October 24, 1995, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the motion should not be granted. On November 6, 1995, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the Union's certification on the basis of its contention in the representation proceeding that the cargo operations' assistant managers are statutory supervisors or managers. In addition, the Respondent in its answer denies that the information requested by the Union is necessary and relevant.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

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We also find that there are no issues warranting a hearing with respect to the Union's request for information.¹ Although the Respondent's answer denies that the information requested by the Union is relevant and necessary, it is well established that employment information of the type requested is presumptively relevant for purposes of collective bargaining and must be furnished on request.²

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Hawaii corporation with an office and place of business in Honolulu, Hawaii, has been engaged in the business of transporting freight in interstate commerce.

During the calendar year ending December 31, 1994, the Respondent, in conducting its business operations, derived gross revenues in excess of \$50,000 for transporting freight in interstate commerce under arrangements with and as agent for various common carriers, each of which operates between various States of the United States.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held May 19, 1995, the Union was certified on May 30, 1995, as the exclusive

¹ By letter dated May 30, 1995, the Union requested the following information:

- (1) Names, addresses, titles, rates of pay, date of hire, age and sex of all covered employees.
- (2) Company house rules.
- (3) Company policies and past practices regarding:
 - a. Medical Coverage
 - b. Life Insurance
 - c. Dental Plan
 - d. Pension Plan
 - e. Profit Sharing Plan
 - f. Sick Leave Benefits
 - g. Severance Pay Benefits
 - h. Rest Periods
 - i. Funeral Leave
 - j. Holidays
 - k. Vacations
 - l. Daily and weekly hours of work
 - m. Leaves of absences
 - n. Updated seniority rosters and any other policies or practices which the Company has pursued.
 - o. Jury Duty Pay

² See, e.g., *Tire America*, 315 NLRB 197 (1994); *U.S. Family Care*, 315 NLRB 108 (1994); and *Holiday Inn Coliseum*, 303 NLRB 367 (1991).

collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time salaried and hourly cargo operations' employees employed by the Employer at its Honolulu, Hawaii facility; excluding all confidential employees, guards and/or watch persons and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

About May 30 and June 29, 1995, the Union requested the Respondent to bargain and to furnish information, and since July 6, 1995, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after July 6, 1995, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested necessary and relevant information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Sause Bros., Inc., Honolulu, Hawaii, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Longshoremen's and Warehousemen's Union, Local 142,

AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time salaried and hourly cargo operations' employees employed by the Employer at its Honolulu, Hawaii facility; excluding all confidential employees, guards and/or watchpersons and supervisors as defined in the Act.

(b) Furnish the Union the information that it requested on May 30 and June 29, 1995.

(c) Post at its facility in Honolulu, Hawaii, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Longshoremen's and Union, Local 142, AFL-CIO as

the exclusive representative of the employees in the bargaining unit, and we will not refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on

terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time salaried and hourly cargo operations' employees employed by us at our Honolulu, Hawaii facility; excluding all confidential employees, guards and/or watch persons and supervisors as defined in the Act.

WE WILL provide the Union with the information that it requested on May 30 and June 29, 1995.

SAUSE BROS., INC.